

## **Assembly Bill No. 2371**

### **CHAPTER 545**

An act to amend Sections 1203.1d and 1214 of the Penal Code, and to amend Section 19280 of the Revenue and Taxation Code, relating to fines.

[Approved by Governor September 18, 2000. Filed  
with Secretary of State September 20, 2000.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2371, Lempert. Fines.

(1) Existing law permits the referral of fines, state or local penalties, forfeitures, restitution fines, or restitution orders imposed by specified courts upon a person for criminal offenses under certain conditions to the Franchise Tax Board for collection. Existing law authorizes a board of supervisors to establish priorities of payment with respect to amounts collected by the Franchise Tax Board. Existing law specifies that fines no less than \$250 may be referred to the board.

This bill would instead require a board of supervisors to establish those priorities of payment, thereby imposing a state-mandated local program. This bill would provide that restitution fines and restitution orders no less than \$100 may be referred to the Franchise Tax Board for collection as a pilot project, subject to the approval of the Director of Finance.

(2) Existing law provides that any judgment for a fine, including a restitution fine, may be enforced in the manner provided for the enforcement of money judgments generally.

This bill would provide that any portion of a restitution fine that remains unsatisfied after a defendant is no longer on probation or parole is enforceable by the State Board of Control, as specified.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1203.1d of the Penal Code is amended to read:

1203.1d. In determining the amount and manner of disbursement under an order made pursuant to this code requiring a defendant to make reparation or restitution to a victim of a crime, to pay any money as reimbursement for legal assistance provided by the court, to pay any cost of probation or probation investigation, to pay any cost of jail or other confinement, or to pay any other reimbursable costs, the court, after determining the amount of any fine and penalty assessments, and a county financial evaluation officer when making a financial evaluation, shall first determine the amount of restitution to be ordered paid to any victim, and shall then determine the amount of the other reimbursable costs.

If payment is made in full, the payment shall be apportioned and disbursed in the amounts ordered by the court.

If reasonable and compatible with the defendant's financial ability, the court may order payments to be made in installments.

With respect to installment payments and amounts collected by the Franchise Tax Board pursuant to Section 19280 of the Revenue and Taxation Code and subsequently transferred by the Controller pursuant to Section 19282 of the Revenue and Taxation Code, the board of supervisors shall establish the priorities of payment, first between fines, penalty assessments, and reparation or restitution, and then between other reimbursable costs. The board of supervisors may establish priorities of payment between orders or parts of orders in cases where defendants have been ordered to pay more than one court order.

Documentary evidence, such as bills, receipts, repair estimates, insurance payment statements, payroll stubs, business records, and similar documents relevant to the value of the stolen or damaged property, medical expenses, and wages and profits lost shall not be excluded as hearsay evidence.

SEC. 2. Section 1214 of the Penal Code is amended to read:

1214. (a) If the judgment is for a fine, including a restitution fine ordered pursuant to Section 1202.4 or Section 1203.04 as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994, with or without imprisonment, the judgment may be enforced in the manner provided for the enforcement of money judgments generally. Any portion of a restitution fine that remains unsatisfied after a defendant is no longer on probation or parole is enforceable by the State Board of Control pursuant to this section. Notwithstanding any other provision of law prohibiting disclosure, the state, as defined in Section 900.6 of the Government Code, a local public entity, as defined in Section 900.4 of the Government Code, or any other entity, may

provide the State Board of Control any and all information to assist in the collection of unpaid portions of a restitution fine for terminated probation or parole cases. For purposes of the preceding sentence, “state, as defined in Section 900.6 of the Government Code,” and “any other entity” shall not include the Franchise Tax Board.

(b) In any case in which a defendant is ordered to pay restitution, the order to pay restitution (1) is deemed a money judgment if the defendant was informed of his or her right to have a judicial determination of the amount and was provided with a hearing, waived a hearing, or stipulated to the amount of the restitution ordered, and (2) shall be fully enforceable by a victim as if the restitution order were a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. Upon the victim’s request, the court shall provide the victim in whose favor the order of restitution is entered with a certified copy of that order and a copy of the defendant’s disclosure pursuant to paragraph (4) of subdivision (f) of Section 1202.4, affidavit or information pursuant to paragraph (5) of subdivision (f) of Section 1202.4, or report pursuant to paragraph (7) of subdivision (f) of Section 1202.4. The court also shall provide this information to the district attorney upon request in connection with an investigation or prosecution involving perjury or the veracity of the information contained within the defendant’s financial disclosure. In addition, upon request, the court shall provide the State Board of Control with a certified copy of any order imposing a restitution fine or order and a copy of the defendant’s disclosure pursuant to paragraph (4) of subdivision (f) of Section 1202.4, affidavit or information pursuant to paragraph (5) of subdivision (f) of Section 1202.4, or report pursuant to paragraph (7) of subdivision (f) of Section 1202.4. A victim shall have access to all resources available under the law to enforce the restitution order, including, but not limited to, access to the defendant’s financial records, use of wage garnishment and lien procedures, information regarding the defendant’s assets, and the ability to apply for restitution from any fund established for the purpose of compensating victims in civil cases. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation or parole is enforceable by the victim pursuant to this section. Victims and the State Board of Control shall inform the court whenever an order to pay restitution is satisfied.

(c) Except as provided in subdivision (d), and notwithstanding the amount in controversy limitation of Section 85 of the Code of Civil Procedure, a restitution order or restitution fine that was imposed pursuant to Section 1202.4 by a municipal court, or by the superior court acting pursuant to subdivision (d) of Section 1462, may be enforced in the same manner as a money judgment in a limited civil case.



(d) Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure shall not apply to a judgment for any fine or restitution ordered pursuant to Section 1202.4 or Section 1203.04 as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994.

(e) (1) This section shall become operative on January 1, 2000, and shall be applicable to all courts, except when all of the following apply:

(A) A majority of judges of a court apply to the Judicial Council for an extension.

(B) The judicial application described in paragraph (1) documents the need for time to adjust restitution procedures and practices, as well as to facilitate judicial education and training in direct restitution to victims under subdivision (f) of Section 1202.4.

(C) The Judicial Council grants the extension upon finding good cause.

(2) Upon the grant of an extension pursuant to the application of a court under this subdivision, the provisions of former Section 1202.4 shall continue to apply with respect to that court. The extension may be for any period of time set by the Judicial Council, but shall not exceed January 1, 2002, in any case.

SEC. 3. Section 19280 of the Revenue and Taxation Code is amended to read:

19280. (a) (1) Fines, state or local penalties, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior or municipal court of the State of California upon a person or any other entity that is due and payable in an amount totaling no less than two hundred fifty dollars (\$250), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the county or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board.

(2) For purposes of this subdivision:

(A) The amounts referred by the county or state under this section may include any amounts that a government entity may add to the court-imposed obligation as a result of the underlying offense, trial, or conviction. For purposes of this article, those amounts shall be deemed to be imposed by the court.

(B) Restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, provided that all of the following apply:

(i) The government entity has the authority to collect on behalf of the state or the victim.

(ii) The government entity shall be responsible for distributing the restitution order collections, as appropriate.

(iii) The government entity shall ensure, in making the referrals and distributions, that it coordinates with any other related collection activities that may occur by counties or other state agencies.

(iv) The government entity shall ensure compliance with laws relating to the reimbursement of the State Restitution Fund.

(C) The Franchise Tax Board shall establish criteria for referral, which shall include setting forth a minimum dollar amount subject to referral and collection.

(b) For the period January 1, 1995, to December 31, 1997, inclusive, for purposes of a manageable implementation and evaluation of the program authorized by this article, the Franchise Tax Board may limit referrals to nine counties.

(c) Upon written notice to the debtor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral, shall be treated as final and due and payable to the State of California, and shall be collected from the obligor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(d) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court or the state referring to the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the obligor and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

SEC. 4. (a) Notwithstanding paragraph (1) of subdivision (a) of Section 19280 of the Revenue and Taxation Code, restitution fines imposed by a superior or municipal court of the State of California upon a person or any other entity that are enforceable by the State Board of Control and are due and payable in an amount totaling no less than one hundred dollars (\$100), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists may be referred by the State Board of Control to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board. The debt collection caseload may be limited based on the current capacity of the Franchise Tax Board.

(b) Subdivision (a) shall be implemented as a pilot project, subject to the approval of the Director of the Department of Finance.

(c) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.